IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 204 OF 2006

Kabir Mulchandani, .. Petitioner
Vs
The State of Maharashtra & Anr. .. Respondents

Mr Satish L.Maneshinde, for the petitioner.
Mr Khandeparkar i/b M/s Khandeparkar & Associate for respondent no.2.
Mr S.R.Shinde, APP for the respondent-State.

WITH

CRIMINAL WRIT PETITION NO. 640 OF 2006

Kabir Mulchandani, .. Petitioner
Vs
The State of Maharashtra & Anr. .. Respondents

Mr Satish L.Maneshinde, for the petitioner.
Mr S.R.Shinde, APP for the respondent-State.

CORAM : D.B.BHOSALE, J.

DATED : 12th JUNE, 2006

P.C.:

1. Heard the learned counsel for the parties.

2. These two writ petitions were placed before the learned Single Judge in the vacation on 25.5.2006 when the following order was passed:

> "1. Heard,
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> 2. The petitioner is apprehending arrest of his arrival from abroad in connection with the offence punishable under section 138 of Negotiable Instruments Act and also in connection with matrimonial offence. There is a Proclamation issued and also non-bailable

> warrant against the petitioner. It is stated by the learned counsel for the petitioner that the petitioner is likely to come to India from abroad within one weeks. The learned counsel for the petitioner undertakes that the petitioner shall remain present before the appropriate court for seeking appropriate reliefs and he shall appear within three days of his arrival.In such circumstances the following order is passed:
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> "The petitioner shall not be arrested till 4th June, 2006."

Mr Maneshinde, learned counsel for the petitioner, submits that in view of the aforesaid order, the petitioner came to India on 27/5/2006. On that day, he had gone to present himself before the 40th Court at Girgaon, Mumbai, however, on that day the learned Magistrate was not available for transacting the judicial work. The petitioner’s wife, who is staying in UAE, Dubai was not keeping well and, therefore, he had to go back to Dubai on the same day evening and as a result of which he could not file an application for appropriate reliefs as stated in the aforesaid order. I am informed that on 30/5/06 an application seeking permission to appear on some other date was filed and the same was rejected for noncompliance of the aforesaid order dated 22.5.2006. It is against this backdrop, the learned advocate for the petitioner prayed for some more breathing time to the petitioner to appear before the court for seeking appropriate reliefs.

3. In the first petition, the petitioner has prayed for quashing of Case No.64/P/2002, originally numbered as Case no.10/I&R/2002 registered by respondent no.1 and pending before the 40th Court at Girgaon, Mumbai. That case came to be registered in view of a private complaint filed by respondent no.2. The petitioner has annexed an undertaking dated 10.6.2004 to the writ petition as Exhibit-A, which shows that the respondent-complainant and the petitioner have settled their dispute amicably. Mr Khandeparkar, learned counsel, appears for respondent no.2. The learned counsel for the petitioner and respondent no.2 state that they desire to approach the learned Magistrate seeking permission to compound the offence since all the offences in the said complaint are compoundable.

4. Insofar as the second writ petition is concerned, the petitioner has prayed for quashing of the entire complaint against the petitioner in C.C. no 1304/SS of 2005 pending before the learned Metropolitan Magistrate's Court at Small Causes Court, Mumbai. That complaint is under section 138 of the Negotiable Instruments Act. Respondent no.2 is the complainant in the said complaint. He is not before the Court. Mr Maneshinde, learned counsel for the

petitioner, states that the petitioner shall reach India in the intervening night of 14th and 15th of June, 2006 and shall appear before the learned Magistrate before whom both the aforesaid cases are pending and file appropriate applications seeking appropriate reliefs. Keeping in view the overall facts and circumstances of the case and without examining the merits of the case, I am satisfied that the following order shall meet the ends of justice.

(i) The petitioner shall appear before the concerned learned Magistrate on 15/6/2006 and file appropriate applications in both the aforestated cases seeking appropriate reliefs.

(ii) The petitioner shall not be arrested when he would approach the Court for filing applications as aforestated as also at the Airport when he would reach in the intervening night of 14th and 15th June,2 006 until he approaches the Court for filing such application.

(iii) Insofar as criminal writ petition no.640 of 2006 is concerned, the petitioner shall give notice to respondent no.2, through his advocate on or before 13/6/2006, informing him about this order as also the application that the petitioner proposes to file

before the learned magistrate in this case. The learned Magistrate shall deal with the applications on merits in accordance with law.

(iv) The petitioner shall not leave India without permission of the learned Magistrate before whom the aforestated cases are pending.

(v) The writ petitions are disposed of.

(D.B.BHOSALE,J.)